

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:SB:6:HOU:1:POSTF-120763-02

TLFenner

date: **MAY 23 2002**

to: Coy M. Jennings, Revenue Officer #3481  
Stop 5434HAL

from: Thomas L. Fenner  
Attorney (SB/SE)

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subject: Employment tax liabilities of a single-member LLC.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ISSUE

A single-member LLC has unpaid employment tax liabilities. The LLC has not elected to be treated as a corporation. Is the owner's liability for the employment taxes limited to the trust fund recovery portion under I.R.C. § 6672? For the reasons described below, we believe it is not.

FACTS

The taxpayer operates a business as a Texas Limited Liability Company. She is the only owner of the LLC and she reports all of the LLC's income and expenses on Schedule C of her individual income tax return. She does not file a Form 1065 partnership return or a Form 1120 corporate income tax return for the LLC, and she does not claim that the LLC is an "association." The LLC has employees and owes employment taxes.

### ANALYSIS

The limited liability company is a relatively new form of business in Texas, created by statute in 1991. See generally Tex. Rev. Civ. Stat. Ann. art. 1528n (Vernon 1997). A limited liability company is similar to both a corporation and a limited partnership. The owners of an LLC are the members, who generally are not liable for the debts of the LLC. Id. at art 1528n, art. 4.03. The law of Texas permits the organization of single-member LLCs - i.e., LLCs having only one member. Id. at art. 4.01.A.

The "check the box" regulations provide a framework for the federal tax classification of entities. Treas. Reg. § 301.7701-1 et seq. Under the regulations, the classification of an LLC depends on the number of members in the LLC and any election filed for the LLC. For example, a multi-member LLC can elect to be treated as an association taxable as a corporation. Treas. Reg. § 301.7701-3(a). If no election is made, the multi-member LLC will be treated as a partnership. Treas. Reg. § 301.7701-3(b)(1)(i).

Alternatively, if an LLC is a single-member LLC, the question is whether it is treated as an association taxable as a corporation or as a disregarded entity. A single-member owner could elect to have the LLC classified as an association taxable as a corporation. Treas. Reg. § 301.7701-3(a). If no election is made, Treas. Reg. § 301.7701-3(b)(1)(ii) provides that the single-member LLC will be disregarded as an entity separate from its owner. A disregarded LLC's activities are treated in the same manner as a sole proprietorship of the owner. Treas. Reg. § 301.7701-2(a).

As a general rule, a single-member LLC that is disregarded has no tax filing obligation, because all its activities are reported by the company's sole owner. As an exception to the general rule, a disregarded LLC is permitted to separately calculate, report, and pay its employment tax obligation with respect to its employees under its own name and EIN. Notice 99-6, 1999-1 C.B. 321. The owner of a single-member LLC that is treated as a disregarded entity for federal tax purposes is the employer for purposes of employment tax liability. Id. Consequently, "the owner retains ultimate responsibility for the employment tax obligations incurred with respect to employees of the disregarded entity." Id. at 322.

CONCLUSION

Because your taxpayer did not elect to have the LLC classified as an association taxable as a corporation, the LLC is disregarded as an entity separate from the owner, and the owner is ultimately responsible for all of the employment tax obligations of the LLC, not just the trust fund recovery portion. However, if the disregarded LLC elects separate calculation, reporting, and payment of the employment tax obligations pursuant to Notice 99-6, the Service will not proceed against the owner if the LLC fulfills its employment tax obligations.

Please call me at (281) 721-7309 if you have any questions.

Area Counsel  
(Small Business/Self-Employed:Area 6)

By: /s/ Thomas L. Fenner  
THOMAS L. FENNER  
Attorney (SB/SE)